

ITEL

October 11, 1988

Itel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

1 5879

RECORDATION NO. _____ FILING DATE

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

OCT 17 1988 - 11 35 AM
A-6

INTERSTATE COMMERCE COMMISSION

Re: Master Lease Agreement No. 2209 dated September 20, 1988,
between Itel Rail Corporation, Itel Railcar Corporation
and Newburgh and South Shore Railroad Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Master Lease under a new recordation number.

The parties to the aforementioned instrument are listed below:

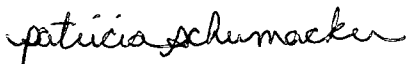
Itel Rail Corporation and
Itel Railcar Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Newburgh and South Shore Railroad Company (Lessee)
4200 E. 71st Street
Cleveland, Ohio 44105

This Master Lease Agreement describes the terms and conditions under which equipment set forth in subsequent schedules thereto is leased.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,



Patricia Schumacker
Legal Department

MASTER LEASE NO. 2209-00

OCT 17 1988 - 11 35 PM

INTERSTATE COMMERCE COMMISSION
20th day of

THIS LEASE AGREEMENT ("Agreement") is made as of this 20th day of September, 1988, by and between **ITEL RAIL CORPORATION** and **ITEL RAILCAR CORPORATION**, each a Delaware corporation located at 55 Francisco Street, San Francisco, California 94133, severally, as lessors, and **NEWBURGH AND SOUTH SHORE RAILROAD COMPANY**, an Ohio corporation, located at 4200 E. 71st Street, Cleveland, Ohio 44105 as lessee ("Lessee").

1. Scope of the Agreement

- A. Itel Rail Corporation is lessor hereunder only with respect to all Cars listed on schedules executed by it, and Itel Railcar Corporation is lessor hereunder only with respect to all Cars listed on schedules executed by it. The capitalized term "Lessor" in any context shall refer either to Itel Rail Corporation or to Itel Railcar Corporation (or to any subsidiary of either which may execute schedules to this Agreement), whichever is the lessor of the Cars referred to or affected by such reference. The liabilities, obligations, benefits and rights of Itel Rail Corporation and Itel Railcar Corporation (and such subsidiary, if any) shall be several, not joint, and shall only apply to each with respect to the Cars for which it is lessor.
- B. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein and in the applicable Schedules, a number of items of equipment bearing the reporting marks, and of the type, construction and other description set forth in any Schedules attached hereto and executed by the parties concurrently herewith or hereafter. The word "Schedule" as used herein includes the Schedule executed herewith and any Schedule(s) or amendments which are subsequently executed with the intent that they be made a part of this Agreement. When any such Schedule or amendment is executed by both parties, it shall become a part of this Agreement. "Cars" shall mean all items of equipment subject to this Agreement and "Car" shall mean an individual item of equipment subject to this Agreement. The terms and provisions of each Schedule shall control, as to the Cars listed on such Schedule, over any inconsistent or contrary terms and provisions in the body of this Agreement.
- C. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the owner and lessor of all Cars and that no joint venture or partnership is being created. Lessee's interest in the Cars shall be that of a lessee only. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of this Agreement, with respect to the Car(s) listed on each Schedule attached to the Agreement shall be as set forth on such Schedule.

3. Supply Provisions

- A. Lessee hereby approves the specifications of the Cars described on the applicable Schedule. If the Cars are to be remarked, Lessor shall, at its expense and subject to any recovery of such expense as allowed for in any Schedule, remark the Cars to the designated reporting marks in compliance with all applicable regulations. Each Car shall be deemed delivered and subject to the terms and provisions of this Agreement on the date set forth in the applicable Schedule. From and after Delivery (as defined in the applicable Schedule), Lessee shall be liable for all costs, charges and expenses on account of or relating to transportation or movement of any Car. If Lessor is required to pay any such amount, Lessee shall reimburse Lessor within thirty (30) days of receiving an invoice from Lessor for such amount. Lessee covenants that it shall subscribe to the Association of American Railroads ("AAR") interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules") for the duration of this Agreement.
- B. With respect to any Car not subject to a fixed rental, Lessee shall load such Car prior to loading any similar equipment interchanged from other railroads, leased by or assigned to Lessee from other parties, or, except as provided in the next sentence, purchased by Lessee subsequent to the date of this Agreement. In the event Lessee requires additional similar equipment and Lessee purchases such equipment, Lessee agrees not to discriminate against the Cars vis-a-vis the equipment so purchased, in the provision of offline loads, operation, use and maintenance. Lessee shall use its best efforts to maximize the off-line Utilization of the Cars.
- C. During the term of this Agreement, Lessor may, at its expense, replace any or all Cars with cars of like type, design, dimensions and condition upon prior written notice from Lessor to Lessee. Any such equipment replaced shall be subject to the terms and conditions of this Agreement and the applicable Schedule.

4. Record Keeping

- A. The party designated on the applicable Schedule shall prepare and file all documents relating to the registration, maintenance and record keeping functions normally performed with respect to railroad equipment of the type subject to this Agreement including, but not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in The Official Railway Equipment Register and the Universal

Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars.

- B. All record keeping functions relating to the use of the Cars by Lessee and railroads, including but not limited to car hire reconciliation, collection and receipt of revenues from other railroad companies, records pertaining to maintenance and repair, and billing in accordance with the Interchange Rules shall be performed by the party designated in the applicable Schedule. If Lessor performs such record keeping functions, immediately upon receipt from any railroad of any revenues in the form of a draft, check or other instrument payable to Lessee, Lessor shall be entitled to endorse and deposit such draft, check or other instrument into Lessor's account and to retain such revenues as set forth in the rental section of this Agreement or the applicable Schedule. All record keeping performed hereunder and all records of payments, changes and correspondence related to the Cars shall be separately recorded and maintained in a form suitable for reasonable inspection by the other party from time to time during regular business hours. Upon Lessor's request, Lessee shall supply Lessor with telephone reports of the number of Cars in Lessee's possession and control.
- C. This Subsection 4.C. shall apply only with respect to Cars which are not subject to a fixed rental and for which Lessee is responsible to perform car hire. Unless Lessor is authorized to subscribe to the Train II (65 and 67) Location Advices, Lessee shall, within ten (10) days after the close of each calendar month, supply Lessor with copies of Lessee's interchange records with respect to cars interchanged to and from Lessee's railroad line. Upon Lessor's reasonable request, Lessee shall promptly provide Lessor with records of Lessee's car hire payables. In the event Lessee fails to provide Lessor with records of car hire payables, and a user or handling railroad refuses to pay any revenues owed, Lessee shall, within ten (10) days after Lessor's request, pay to Lessor such unpaid revenues.

5. Maintenance

- A. This Subsection 5.A. shall apply only with respect to those Car(s) for which Lessee is designated in Schedule(s) attached hereto to perform or cause to be performed maintenance and to pay all costs and expenses associated therewith. Lessee shall perform or cause to be performed and pay all costs and expenses associated with the maintenance of the Cars. Any parts, replacements or additions made to any Car are deemed accessions to such Car and title thereto shall vest immediately in Lessor. In the event that Lessor performs any repair work for Lessee, all sums due for such repair work shall be deemed additional rental hereunder, and Lessee shall pay the additional rental within ten (10) days of receiving an invoice from Lessor. "Repair Work" is defined as all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in

accordance with the Interchange Rules, as amended from time to time, and all preventive maintenance necessary to keep and maintain the Cars in good working order and repair. Lessor has the right to inspect the cars at any time to ensure that they are in compliance with AAR regulations.

- B. Subsection 5.B. shall apply only with respect to those Cars for which Lessor is designated in Schedule(s) attached hereto to perform or cause to be performed maintenance. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed all inspections of, maintenance, repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules; provided, however, that such repairs, maintenance and servicing ("Maintenance") shall be performed at Lessee's expense in the event that such Maintenance: (i) was occasioned by the fault of Lessee; (ii) results from loading, unloading or use other than permitted under this Agreement; (iii) is for the purpose of repairing, replacing or maintaining interior lading equipment, special interiors and linings or removable parts; (iv) relates to damage resulting from any commodity or material loaded in any Car; or (v) arises in those instances in which the Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such Maintenance. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee may make running repairs to those parts of the Cars specified in the applicable Exhibit B attached to the Schedule describing such Cars to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any Maintenance required including, when available, the time, place and nature of any accident. Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's property without prior approval from Lessor. All such repairs shall be performed under the direction and control of Lessor. Any repairs performed to the Cars by Lessee at Lessor's expense shall be at a labor rate not to exceed the prevailing AAR Labor Rate unless a different labor rate is mutually agreed upon in writing by the parties. Should the AAR Mechanical Department inspect or investigate Lessee's maintenance facilities and determine that restitution is due owners of equipment repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all equipment owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities.

- C. Subsection 5.C. shall apply only with respect to those Cars for which Lessor is designated in Schedule(s) attached hereto to perform or cause to be performed maintenance. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good

operating condition as specified in the Interchange Rules. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alteration, improvement or addition. Title to any alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Lessor shall have the right to perform Nonroutine Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee or at a contract repair facility. Nonroutine Repairs ("Nonroutine Repairs") shall be defined as repairs of a type that Lessor determines Lessee would not normally perform or that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall notify Lessee at least twenty-four (24) hours in advance of performing such Nonroutine Repairs.

6. Tax and Insurance

- A. Lessee shall be responsible for the Cars: (i) while in Lessee's possession or control; and (ii) in the same manner and under the same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained: (i) all-risk, physical loss and damage insurance with respect to the Cars while on Lessee's tracks or in Lessee's care, custody or control; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance policies shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ("Financing Party") and any assignee of Lessor as additional named insureds and as loss-payees. Said policies shall provide that Lessor, Financing Party and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by Lessee.
- B. Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance.

- C. Responsibility for taxes for the Cars shall be as set forth on the applicable Schedule hereto.

7. Storage

In the event that any Car(s) is not in use while subject to this Agreement, Lessee shall be responsible for providing a storage location and paying all costs associated with storing such Car(s). Any storage location provided by Lessee which is off Lessee's lines shall be as secure as if such Car(s) were stored on Lessee's lines, and Lessee shall be responsible for the Car(s) in the same instances, and to the same extent, as if the Car(s) were on Lessee's lines.

8. Rent

- A. During the term of this Agreement, Lessee shall pay to Lessor for each Car, commencing on the date of delivery thereof, and at the times provided in the applicable Schedule, the monthly rental specified in the applicable Schedule.
- B. Unless otherwise specified in the applicable Schedule hereto, rental payments shall not abate if any Car is out of service for any reason whatsoever.
- C. Lessor has the right to offset against Lessee's revenue sharing portion (if any) set forth in the rental section of the Schedule(s) hereto any sums arising out of this Agreement which are owed by Lessee to Lessor but which remain unpaid.
- D. In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car ("Casualty Car") will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8.
- E. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Casualty Car, Lessee shall notify Lessor of the occurrence of such damage as set forth in the AAR Interchange Rules. If Lessee fails to notify Lessor within sixty (60) days of the damage date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage and such Car shall remain subject to the terms of this Agreement, including the rental terms, until the date on which Lessor receives all amounts due to it hereunder. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.

- F. Lessor may, at its expense, replace any Casualty Car with similar equipment ("Replacement Car") upon prior written notice from Lessor to Lessee.
- G. Lessor and Lessee agree to cooperate with and to assist each other in any manner reasonably requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars; provided, however, that this shall not affect their respective obligations under this Section 8.

9. Possession and Use

- A. Throughout the continuance of this Agreement so long as Lessee is not in default Lessee shall be entitled to possession of each Car from and after delivery of such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used; (i) in conformity with all AAR Interchange Rules; (ii) in compliance with the terms and provisions of this Agreement; (iii) only within the continental limits of the United States of America or in temporary or incidental use in Canada; and (iv) in such service as will not constitute a train hauling predominantly a single commodity, commonly referred to as a "unit train." However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars which are the subject of this Agreement. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party. Lessee acknowledges that there may be more than one such secured party, that the Cars on each Schedule are severable, and that each Schedule constitutes a separate lease interest of separate secured parties. In the event of a default by Lessor under such financing agreement(s), Lessee agrees to take the aforesaid actions as directed by each secured party with respect to the Cars subject to such secured party's interest. For the purposes of the exercise by any secured party, of any Lessor's rights or remedies provided hereunder or otherwise arising, Lessee agrees that each secured party can exercise such rights and remedies independently and severally with respect to those Cars subject to such secured party's interest, and such exercise shall not affect or impair the rights and remedies of Lessor or any other secured party, and shall not terminate or otherwise affect the rights, duties or obligations of Lessee, with respect to any other Cars.
- B. Lessee agrees that the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located, in compliance with all lawful acts, rules, regulations and orders of any governmental bodies or officers having power to regulate or

supervise the use of such property, and in accordance with all rules established by the AAR, except that either Lessor or Lessee may by appropriate proceedings timely instituted and diligently conducted, contest the application of any such act, rule, regulation or order at the expense of the contesting party.

- C. At Lessor's election Cars may be marked to indicate the rights of Lessor, of an assignee, mortgagee, trustee, pledgee or security holder of Lessor, or of a lessor to Lessor. Except for renewal and maintenance of the aforesaid marks, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable Schedule except upon the written direction or consent of Lessor. Lessee shall be responsible for all costs associated with any marking changes made at its request.
- D. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising by, through or under it, on, or with respect to the Cars or any interest therein, or the revenues earned thereby, or in this Agreement or Schedule(s) hereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 9.A. hereinabove. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security, interest, or claim if the same shall arise at any time. If Lessee fails to take action as described in the previous sentence, Lessor may, at Lessee's expense, take such action and Lessee shall pay the cost thereof within ten (10) days of receiving an invoice from Lessor for such expense.

10. Default

- A. The occurrence of any of the following events shall be an event of default:
 - (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;
 - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter;
 - (iii) The filing by or against Lessee of any petition or the initiation by or against Lessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of or extensions of indebtedness;

- (iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;
- (v) Any action by Lessee to discontinue rail service on all or a substantial portion of its track or to abandon all or a substantial portion of its rail properties that would materially affect Lessee's ability to perform its obligations hereunder.

B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and recover damages, and/or:

- (i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof;
- (ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of the Cars and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which would have become due through the end of the original term of the Agreement, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof.

11. Expiration or Early Termination

A. Expiration

Upon the expiration of this Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for arranging transportation and for paying all related costs incurred in moving such Cars to Lessee's railroad tracks subsequent to the time of expiration. Lessee shall, at Lessor's option, provide for any Car which is either on the Lessee's railroad tracks at the time of expiration or is subsequently returned to Lessee's railroad tracks, up to thirty (30) days free storage on its railroad tracks from either the date of expiration or

the date the last Car subject to such Schedule is returned to Lessee's railroad line subsequent to the time of expiration, whichever date is later. In the event any Car(s) remain on Lessee's tracks beyond the free storage period through no fault of Lessee, then Lessor shall pay to Lessee a mutually agreeable daily rate for each day such Car remains in storage beyond the free storage period.

- (ii) At the option of Lessor, either Lessee or a contractor chosen by Lessor shall, at Lessee's expense, remark the Cars as set forth in Subsection 11.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. After remarking, Lessee shall, if so requested by Lessor, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.
- (iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, remarking and transporting each Car to such location shall be borne by Lessee.

B. Early Termination

Upon the early termination of this Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for arranging transportation and paying all related costs incurred in moving such Cars to the Lessee's railroad tracks subsequent to the time of early termination. Lessee shall, at Lessor's option, provide for any Car which is either on the Lessee's railroad tracks at the time of early termination or is subsequently returned to Lessee's railroad tracks, up to one hundred twenty (120) days free storage on its railroad tracks from either the date of early termination or the date the last Car subject to such Schedule is returned to Lessee's railroad line subsequent to the time of early termination, whichever date is later. In the event any Car(s) remains on Lessee's railroad tracks beyond the free storage period through no fault of Lessee, then Lessor shall pay to Lessee a mutually agreeable daily rate for each day such Car remains in storage beyond the free storage period.
- (ii) In the event of an early termination, either Lessee or a contractor chosen by Lessor shall, at Lessee's expense, remark the Cars as set forth in Subsection 11.C. of this Agreement. Lessee shall not remove Lessee's railroad marks from any Car without the prior written consent of Lessor. Lessor shall use reasonable efforts to insure that the costs associated with remarking each Car are

reasonable. After remarking, Lessee shall, if so requested by Lessor, use its best efforts to load the Cars with freight and deliver them to a connecting carrier for shipment.

(iii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's tracks, the cost of assembling, delivering, storing, remarking, and transporting each Car to such location shall be borne by Lessee.

C. Remarking, with respect to each Car, shall include the following: a) removal of existing mandatory markings and all company logos of Lessee; b) complete cleaning of the area where new marks are to be placed as designated by Lessor; c) application of new mandatory markings; and d) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Section.

D. Upon the expiration or early termination of the Agreement with respect to any Car, Lessee shall ensure that such Car is in the same or better condition, order and repair as when delivered to Lessee, normal wear excepted, and free of all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. Lessee shall likewise ensure that each Car is free of any and all Rule 95 damage and damage or other condition caused by Lessee's negligence or by Lessee's shipper.

12. Indemnities

A. LESSEE SHALL DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY LOSS, DAMAGE, DESTRUCTION, LIABILITY COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) ARISING OUT OF, RELATED TO OR IN CONNECTION WITH THE CARS WHICH IS OCCASIONED BY THE FAULT OF LESSEE, OR WHICH OCCURS WHILE THE CARS ARE IN LESSEE'S POSSESSION OR CONTROL, OR WOULD BE THE "HANDLING CARRIER'S" RESPONSIBILITY UNDER THE INTERCHANGE RULES, AS IF THE CARS WERE NOT BEARING LESSEE'S REPORTING MARKS.

B. EXCEPT AS PROVIDED IN SUBSECTION 12.A., AND EXCEPT FOR THOSE CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS OR EXPENSES FOR WHICH LESSEE SHALL BE RESPONSIBLE AS SET FORTH IN THIS AGREEMENT, LESSOR SHALL DEFEND, INDEMNIFY AND HOLD LESSEE HARMLESS AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF OR TO THE CARS, USUAL WEAR EXCEPTED.

13. Representations, Warranties, and Covenants

Lessee represents, warrants and covenants that:

A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and, insofar as is material to Lessor's rights under this Agreement, has the corporate power, authority, and is duly qualified and authorized to do business wherever necessary to carry

out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

- B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in Section 9 hereinabove.
- C. There is no action or proceeding pending or threatened against Lessee before any court, administrative agency or other governmental body which might result in any material adverse effect on the business, properties, assets, or condition, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D. There is no fact which lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

14. Inspection

Lessor shall have reasonable access to inspect the Cars while on Lessee's lines to ensure Lessee's compliance with its obligations hereunder. Requests for such inspections on Lessee's lines must be coordinated in advance with Lessee and shall be held at such times and locations as are mutually agreeable to the parties. Lessor may inspect the Cars while in the possession of other railroads.

15. Miscellaneous

- A. Lessee shall have no right to assign, sublease, or loan any of the Cars or enter into any agreement with any other party with respect to the Cars ("Third Party Agreement(s)") without prior written consent of Lessor.
- B. All rights of Lessor under this Agreement may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part.
- C. Subject to the restrictions against assignment contained hereinabove, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.
- D. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or

its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in this Agreement.

- E. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.
- F. The terms of this Agreement and all rights and obligations hereunder shall be governed by the internal laws of the State of California and exclusive jurisdiction of any action with respect to the Agreement shall be in the courts located in the City and County of San Francisco, California.
- G. Any notice required or permitted to be given pursuant to the terms of this Agreement shall be properly given when made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Lessor: Itel Railcar Corporation
55 Francisco Street
San Francisco, CA 94133
Attn: President

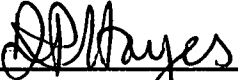
Lessee: Newburgh and South Shore Railroad Company
4200 E. 71st Street
Cleveland, Ohio 44105
Attn: President

or at such other addresses as Lessor or Lessee may from time to time designate.

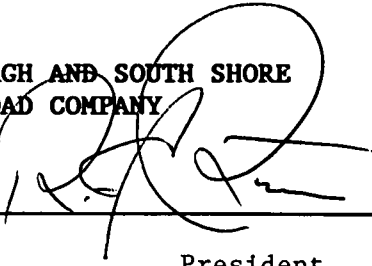
- H. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or early termination of this agreement.
- I. This Agreement represents the entire Agreement. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

J. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract.


ITEL RAIL CORPORATION

By: 
Title: President
Date: October 3, 1988

NEWBURGH AND SOUTH SHORE
RAILROAD COMPANY

By: 
Title: President
Date: September 20, 1988

ITEL RAILCAR CORPORATION

By: 
Title: President
Date: October 3, 1988

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 3rd day of October, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Lease Agreement signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

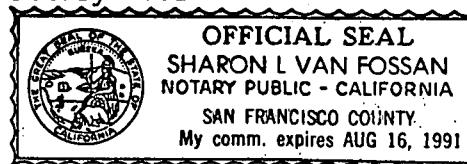
Sharon L. Van Fossan
Notary Public



STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 3rd day of October, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Lease Agreement signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF Illinois)
) ss:
COUNTY OF Cook)

On this 20th day of September, 1988, before me personally appeared R. E. Smith, to me personally known, who of being by me duly sworn says that such person is President, of Newburgh and South Shore Railroad Company, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

B. J. Glowinski
Notary Public